PARTIES:	MICHELLE RHONDA STACEY
	v
	ROSS ALEXANDER PEARCE
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURTof the NORTHERN TERRITORY exercising Territory Jurisdiction
FILE NO:	269/94 (9425054)
DELIVERED:	10 June 1997
HEARING DATES:	2 May 1997
JUDGMENT OF:	Thomas J

REPRESENTATION:

Counsel:

Plaintiff:	M. Carter
Defendant:	C. Black

Solicitors:

Plaintiff:	Close & Carter
Defendant:	Cecil Black

Judgment category classification:	C
Judgment ID Number:	tho97006
Number of pages:	6

tho97006

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

No. 269/94 (9425054)

BETWEEN:

MICHELLE RHONDA STACEY
Plaintiff

AND:

ROSS ALEXANDER PEARCE
Defendant

CORAM: THOMAS J

REASONS FOR JUDGMENT

(Delivered 10 June 1997)

On 11 April 1997 I gave reasons for refusing an application made by the defendant during the course of a hearing of an application by the plaintiff.

I listed the matter to come before the Court again on 2 May 1997.

On 1 May 1997 the defendant in this matter issued an Originating Motion No. 86 of 1997 pursuant to s40 of the *De Facto Relationships Act* seeking to vary certain orders made by this Court with the consent of the parties on 15 April 1996.

When this matter came before the Court on 2 May 1997 Mr Carter, for the plaintiff, contended that the Court should now make orders for disbursement of monies held in the trust account of Close and Carter Solicitors as sought in summons issued by the plaintiff on 18 December 1996. Mr Carter's reasons are as follows:

1) The decision of this Court delivered on 11 April 1997 confirms the finality of orders made by the Court with the consent of the parties on 15 April 1996.

2) The decision of 11 April 1997 concluded that the defendant would need to make application pursuant to s40 of the *De Facto Relationship Act* in accordance with the procedures provided in the Supreme Court Rules.

3) The funds remaining in the trust account of Close and Carter relating to this matter should be distributed in accordance with the Court order made with the consent of the parties on 15 April 1996.

4) The matter having been brought to finality by order of the Court on 11 April 1996, the plaintiff is entitled to a distribution of monies in accordance with that order.

5) Even if the defendant were to issue injunction proceedings to preserve the assets pending the hearing of the defendant's application to vary the Court order, such application would be unlikely to succeed.

The defendant has not in fact issued any such injunction proceedings.

Mr Black, on behalf of the defendant, argues that although his application on Originating Motion is a new action it is fundamentally an action to cure an error in the Consent Order made on 15 April 1996.

It is Mr Black's submission that the preferred order would be that the monies be retained in the trust account of Close and Carter awaiting the outcome of the defendant's application otherwise they may be dissipated.

There is no evidence before me that assets of the plaintiff will be dissipated or that the plaintiff is about to leave the Northern Territory.

I can see no reason at this time to exercise the discretion of the Court and make an order that the monies in question should be preserved in the trust account of Close and Carter pending the determination of matter 86/97. The plaintiff is entitled to the fruits of her judgment.

If Mr Black is concerned that assets, the subject of his s40 application, may be dissipated, or that the defendant in that matter may abscond the jurisdiction, then he may make interlocutory application for injunctive relief at any time before or during the hearing of matter 86/97 pursuant to Supreme Court Rules r38.01. He would then need to satisfy the well established tests for the grant of such relief.

On balance I consider that Mr Carter is right and that the matter having been brought to final judgment the plaintiff is entitled to have the funds distributed in accordance with the judgment of the Court on 15 April 1996.

N.J. Williams "Supreme Court Civil Procedure, Victoria" loose leaf 3rd ed at p5393 [I 59.01.5] states:

> "…. A judgment or order is a formal decision of a court given or made in a proceeding between parties in the court which determines or disposes of some question in dispute in the proceeding. The decision binds the parties. …."

In *Legal Practitioners Complaints Committee v A Practitioner* (1987) 46 SASR 126, Olsson J said at page 137 in discussing the nature of a "judgment" or "order" for the purposes of appeal:

> "In this regard it is to be recalled that the expressions "judgment" and "order" have a technical, legal, signification. Essentially they embrace formal decisions, binding on and enforceable between the parties, which dispose of and determine a specific matter or question in proceedings. They are what Barwick CJ has described as "operative judicial acts" which are "definitive of legal rights" …."

There is further useful discussion by the Full Court of the Federal Court on the nature of a "judgment" in *Ah Toy v Registrar of Companies (NT)* (1985) 61 ALR 583 at p588. As to the finality of judgments or orders Barwick CJ said in the High Court case of *Bailey v Marinoff* (1971) 125 CLR 529 at 530 that:

> "…. Once an order disposing of a proceeding has been perfected by being drawn up as the record of a court, that proceeding apart from any specific

> and relevant statutory provision is at an end in that court and is in its substance, in my opinion, beyond recall by that court. It would, in my opinion, not promote the due administration of the law or the promotion of justice for a court to have a power to reinstate a proceeding of which it has finally disposed. ...."

In the same case at pp531-2 Menzies J said:

> "... However wide the inherent jurisdiction of a court may be to vary orders which have been made, it cannot, in my opinion, extend the making of orders in litigation that has been brought regularly to an end. ...."

In the Northern Territory case of *Cielo v Kailis Gulf Fisheries* (1991) 104 FLR 189, the plaintiff issued a summons seeking an order that a consent judgment be set aside because the plaintiff's solicitor made a mistake as to the ultimate effect of it. In dismissing the summons Gray J said at 195:

> "... it is, I believe, well settled that a consent judgment, once perfected, cannot be set aside by the court of first instance in the original action even if entered by mistake. ...."

The decision of this Court in matter 269/94 was delivered on 15 April 1996 and authenticated pursuant to Order 60 of the Supreme Court Rules on 18 April 1996. Therefore that proceeding, subject to liberty to apply and "any specific and relevant statutory provision", has been brought regularly to an end and is beyond recall in this Court.

There is a "relevant statutory provision" in the *De Facto Relationships Act*. Section 40 of that Act allows a party to make application to vary or set

aside those orders. That provision was dealt with in my decision in this matter handed down on 11 April 1997 and I need say no more about that here.

The actual amount to be disbursed as claimed in the summons dated 18 December 1996 has been amended. The parties are in agreement as to the actual amounts but at the Court hearing on 2 May 1997 counsel did not have exact details with them. Both counsel requested a ruling from the Court on the principle as to whether or not the plaintiff is entitled to disbursement of the monies in the trust account of Close and Carter.

I rule that the plaintiff is entitled to an order for the disbursement of such funds from the trust account of Close and Carter in accordance with the orders sought in summons issued by the plaintiff on 10 December 1996 or in such amounts as agreed between the parties.

I further order that the defendant pay the plaintiff's costs of this application.